

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
vs.	§	Criminal No. 4:15-cr-0566
	§	
LEE ROY VILLARREAL	§	

**GOVERNMENT'S OPPOSED MOTION TO EXCLUDE EXPERT
WITNESSS**

The United States of America (“Government”) files this Motion to Exclude
Expert witness:

I.

Fed. Rule of Crim. Proc. 16(b)(1)(C) provides that the defendant must, at the
government's request, give to the government a written summary of any testimony
that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules
of Evidence as evidence at trial, if--

(i) the defendant requests disclosure under subdivision (a)(1)(G) and the
government complies; or

(ii) the defendant has given notice under Rule 12.2(b) of an intent to present
expert testimony on the defendant's mental condition.

This summary must describe the witness's opinions, the bases and reasons
for those opinions, and the witness's qualifications.

Fed. Rule of Evidence 702 provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

II.

1. On August 24, 2017, the Defense filed a motion for disclosure of expert witness. (D.E. 102).

2. On September 8, 2017, U.S. District Judge Melinda Harmon signed an order granting the Defense motion for disclosure of expert witness (D. E. 107).

3. On January 28, 2018, the Government filed a request for reciprocal discovery (D.E. 137) which included a request for notice of expert witness pursuant to Fed. Rule of Crim. Proc. 16.

4. On March 15, 2018, U.S. District Judge Melinda Harmon signed an order requiring the Defendant to comply with the requirements of Rule 16 and 26.2 (D.E. 152),

5. On June 10, 2021, counsel for the Defendant emailed the undersigned and indicated it intends to call an expert witness, Michael Deibert. The defense indicated that Mr. Deibert “is a journalist who lived in and around the Gulf Coast and Tamaulipas during the Gulf Cartel infighting at the relevant time in our case [and author of] a book [entitled] *In the Shadow of Saint Death: The Gulf Cartel and the Price of America's Drug War in Mexico*. He has testified at asylum hearings as an expert witness before.”

III.

The Defense notice of expert witness fails to comply with Fed. Rule of Crim. Proc. 16(b)(1)(C) because it fails to describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications. The Government submits that general testimony about the Gulf cartel and/or the Zeta cartel would not help the jury understand the evidence or determine a fact in issue and as such, is inadmissible under F.R.E. 702. Further the anticipated testimony is irrelevant to the guilt or innocence of the Defendant and likely to confuse, waste time and/or mislead the jury. *See* F.R.E. 401 - 403. For these reasons, the testimony of the witness should be excluded.

Respectfully submitted,

JENNIFER B. LOWERY
Acting United States Attorney

s/ Anibal J. Alaniz
Anibal J. Alaniz
Assistant United States Attorney
Texas Bar No. 00966600
Federal I.D. No. 12590
1000 Louisiana
Suite 2300
Houston, Texas 77002
713-567-9000 (office)
713-567-9487 (direct)

s/ Casey N. MacDonald
Casey N. MacDonald
Assistant United States Attorney
New Jersey State Bar No. 043362000
Federal ID No. 915752
1000 Louisiana
Suite 2300
Houston, Texas 77002
713-567-9000 (office)
713-567-9798 (direct)

CERTIFICATE OF SERVICE

On June 11, 2021, the Government filed this Motion to Exclude Alibi witness
by ECF and sent to counsel of record.

s/ Anibal J. Alaniz
Anibal J. Alaniz
Assistant United States Attorney

s/ Casey N. MacDonald
Casey N. MacDonald
Assistant United States Attorney